

## Message Text

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22

ORIGIN NEA-10

INFO OCT-01 ISO-00 L-03 CIAE-00 PM-04 H-02 INR-07 NSAE-00

NSC-05 PA-01 PRS-01 SP-02 SS-15 USIA-06 AID-05 TRSE-00

OMB-01 EB-07 ACDA-07 IO-13 OPR-02 SCA-01 SAM-01 IGA-02

/096 R

DRAFTED BY NEA/AR:COCECIL/JRCOUNTRYMAN:BH

APPROVED BY NEA:ALATHERTONJR

L/PM:TBOREK

PM/SAS:DKEENE

NEA/ARP:FMDICKMAN

DOD/ISA:MTHOMAS

L/M:HSHAMWELL

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R 290226Z JUL 76

FM SECSTATE WASHDC

TO AMEMBASSY JIDDA

INFO SECDEF

USMTM DHARAN

C O N F I D E N T I A L STATE 187552

E.O. 11652: GDS

TAGS: MARR, MILI, SA

SUBJECT: USMTM MEMORANDUM OF UNDERSTANDING

REF: (A) JIDDA 4106, (B) JIDDA 4181 (C) JIDDA 4989

1. WE CONCUR IN THE TEXT OF COMPROMISE AGREEMENT CONTAINED IN REFTEL A, EXCEPT ARTICLE 8.

2. COMMENTS CONCERNING NEGOTIATING APPROACH TO SAUDIS REGARDING LEGAL STATUS OF USMTM PERSONNEL IN SAUDI ARABIA

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A. APPARENTLY SATISFACTORY OPERATION OF 1965 COE AGREEMENT CAUSED ORIGINAL EMPHASIS ON SEEKING LEGAL STATUS SIMILAR TO COE PERSONNEL FOR USMTM PERSONNEL. IF YOU NO LONGER BELIEVE YOU CAN NEGOTIATE A SATISFACTORY ARTICLE 8 ALONG THE LINES OF THE COE AGREEMENT, AN ALTERNATE COURSE IS TO SEEK LEGAL STATUS SIMILAR TO THAT EXTENDED ANALOGOUS US UNITS WORLDWIDE.

B. MISSIONS PERFORMED BY USMTM PERSONNEL PARALLEL THOSE OF MILITARY ASSISTANCE AND ADVISORY PERSONNEL. THERE ARE NUMEROUS CASES IN WHICH AGREEMENTS GRANT MILITARY ASSISTANCE AND ADVISORY PERSONNEL THE SAME PRIVILEGES AND

IMMUNITIES EXTENDED TO ADMINISTRATIVE AND TECHNICAL STAFFS OF DIPLOMATIC MISSIONS. FOR EXAMPLE, IN IRAN, AN AGREEMENT WHICH ACCORDS SUCH PRIVILEGES AND IMMUNITIES AS SPECIFIED IN THE VIENNA CONVENTION ON DIPLOMATIC RELATIONS APPLIES TO US MILITARY AND CIVILIAN PERSONNEL IN IRAN UNDER ARRANGEMENTS SIMILAR TO THOSE APPLICABLE TO USMTM SAUDI ARABIA.

3. AS RECENTLY AS FEBRUARY 13, 1975, SAG, IN PARA 7 OF TECHNICAL COOPERATION AGREEMENT, AGREED THAT USG EMPLOYEES AND DEPENDENTS WOULD BE ENTITLED TO THE PRIVILEGES AND IMMUNITIES ACCORDED TO EMBASSY PERSONNEL OF COMPARABLE RANK AND CATEGORY. (SUCH PRIVILEGES WERE NOT, HOWEVER, EXTENDED TO EMPLOYEES OF FIRMS UNDER CONTRACT TO USG OR SAG.)

4. ACCORDINGLY, AMBASSADOR SHOULD RESUME NEGOTIATIONS WITH FOREIGN MINISTRY PROPOSING ARTICLE 8 WHICH FOLLOWS BELOW IN ATTEMPT TO ACQUIRE SAME STATUS FOR USMTM PERSONNEL AS THAT ACCORDED ADMINISTRATIVE AND TECHNICAL STAFF OF EMBASSY, AS PROVIDED IN VIENNA CONVENTION ON DIPLOMATIC RELATIONS. PROPOSED TEXT OF ARTICLE 8 MAKES NO REFERENCE TO VIENNA CONVENTION SINCE SAUDI ARABIA IS NOT A PARTY TO THE CONVENTION. AMBASSADOR SHOULD ADVISE SAG NEGOTIATORS, HOWEVER, THAT USG REGARDS VIENNA CONVENTION AS DECLARATIVE OF CUSTOMARY INTERNATIONAL LAW IN MOST MATERIAL RESPECTS. (COPY OF CONVENTION BEING POUCHEO  
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TO EMBASSY.)

5. PROPOSED ARTICLE 8, QTE: US MILITARY AND US DOD CIVILIAN EMPLOYEES ASSIGNED OR ATTACHED TO OR UNDER THE CONTROL OF THE CHIEF, US MILITARY TRAINING MISSION, AND THEIR DEPENDENTS, SHALL BE ACCORDED THE PRIVILEGES AND IMMUNITIES WHICH ARE ACCORDED UNDER CUSTOMARY INTERNATIONAL LAW TO THE ADMINISTRATIVE AND TECHNICAL STAFF OF

DIPLOMATIC MISSIONS

UNQTE.

6. AS INDICATED IN PARA 2, REFTEL A, CIVILIANS AND  
DEPENDENTS ARE NOT SUBJECT TO TRIAL BY COURTS-MARTIAL IN  
PEACETIME. THUS SAUDI NEGOTIATORS MIGHT FIND THE EX-  
TENSION OF IMMUNITIES TO US DOD CIVILIAN PERSONNEL AND  
DEPENDENTS OBJECTIONABLE. IT MAY BE POSSIBLE TO OVERLOOK  
SAG RESERVATIONS IN THIS AREA BY EMPHASIZING IN NOTES  
TO BE EXCHANGED AT THE TIME OF SIGNING THE MOU, U.S.  
RESPONSIBILITIES WITH REGARD TO THE IMMUNITIES AND  
PRIVILEGES GRANTED USMTM. PROPOSED IS THE FOLLOWING  
LANGUAGE: IN CONNECTION WITH THE AGREEMENT...SIGNED THIS  
DATE, THE EMBASSY IS PLEASED TO INFORM THE GOVERNMENT OF

SAUDI ARABIA THAT THE AUTHORITIES OF THE UNITED STATES  
CONSIDER ITS EMPLOYEES WHO ENJOY PRIVILEGES AND IMMUNITIES  
UNDER THE AGREEMENT AS HAVING AN OBLIGATION TO ABIDE BY THE  
LAWS AND REGULATIONS OF SAUDI ARABIA, NOTWITHSTANDING  
THEIR PRIVILEGES AND IMMUNITIES, AND WILL REMIND SUCH  
EMPLOYEES OF THEIR OBLIGATION NOT TO ABUSE THE PRIVILEGES  
AND IMMUNITIES WHICH HAVE BEEN BESTOWED UPON THEM FOR THE  
BENEFIT OF THE MISSION."

7. IF THE ALTERED VERSION OF ARTICLE 8 BUTTRESSED BY THE  
ABOVE NOTE DOES NOT GO FAR ENOUGH TO SATISFY SULTAN'S  
CONCEPTION OF A COMPROMISE (PARA 1B REF C), YOU ARE  
AUTHORIZED TO EXCHANGE NOTES AT THE SAME TIME AS THE  
MOU, ASSURING THE SAG OF SYMPATHETIC CONSIDERATION TO  
ITS REQUESTS FOR WAIVER OF IMMUNITY IN CASES WHICH IT  
CONSIDERS TO BE OF PARTICULAR IMPORTANCE. SUGGEST THE  
FOLLOWING TEXT, WHICH IS SIMILAR TO THAT USED IN IRAN:

QTE: IN CONNECTION WITH THE AGREEMENT BETWEEN THE GOVERN-  
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MENT OF THE KINGDOM OF SAUDI ARABIA AND THE GOVERNMENT OF  
THE UNITED STATES OF AMERICAN PERTAINING TO THE UNITED  
STATES MILITARY TRAINING MISSION TO THE KINGDOM OF SAUDI  
ARABIA, SIGNED THIS DATE, THE EMBASSY IS PLEASED TO INFORM  
THE GOVERNMENT OF SAUDI ARABIA THAT THE AUTHORITIES OF THE  
UNITED STATES WILL GIVE SYMPATHETIC CONSIDERATION TO A  
REQUEST FROM THE AUTHORITIES OF THE GOVERNMENT OF SAUDI  
ARABIA FOR WAIVER OF IMMUNITY IN CASES WHERE THE  
AUTHORITIES OF THE GOVERNMENT OF SAUDI ARABIA CONSIDER  
SUCH WAIVER TO BE OF PARTICULAR IMPORTANCE. IT IS UNDER-  
STOOD THAT CASES OF "PARTICULAR IMPORTANCE" WOULD BE CASES  
INVOLVING HEINOUS CRIMES AND OTHER CRIMINALLY REPRE-  
HENSIBLE ACTS."

8. THERE IS SOME CONCERN HERE THAT OFFERING "SYMPATHETIC

CONSIDERATION" TO WAIVERS OF IMMUNITY COULD (A) CREATE EXPECTATIONS THAT WAIVERS WILL IN FACT BE GRANTED WHERE WE ARE NOT PREPARED TO DO SO AS A GENERAL BUT RATHER STRONGLY HELD PRINCIPLE, (B) CREATE UNDESIRABLE PRECEDENT FOR IMMUNITIES OF OTHER USG PERSONNEL IN SAUDI ARABIA. IF THE SAG ACCEPTS THE "SYMPATHETIC CONSIDERATION" FORMULA, YOU SHOULD MAKE CERTAIN THE SAG UNDERSTANDS THAT THIS APPLIES ONLY TO THE PRESENT AGREEMENT, AND THAT THE USG IS NOT OBLIGATED (I.E., RESERVES THE RIGHT TO REJECT A REQUEST) TO WAIVE IMMUNITY IN ANY GIVEN CASE. KISSINGER

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